

**DOCKET NO.: CHIR-0158 (0316.005)**  
**PATENT APPLICATION**

**SERIAL NO.: 09/360,934**  
**FILED: JULY 26, 1999**

**REMARKS**

Claims 38 - 40, 42, 43, 45, 46, and 48 - 53 were pending.

For purposes of Appeal, claims 38 - 40 and 42 are allowed.

Claims 43, 45, 46, and 48 - 53 have been rejected.

By way of this amendment, claims 43, 45, 46, and 48 - 53 are canceled without prejudice.

Upon entry of this amendment claims 38 - 40 and 42 will be pending.

In view of the amendments presented herewith and the following remarks, Applicants respectfully request that the final rejection of the claims be reconsidered and withdrawn.

**Summary of the Amendment**

Claims 43, 45, 46, and 48 - 53, which stand rejected according to the Advisory Action of April 10, 2001, are canceled without prejudice.

**Rejections under 35 U.S.C. §112, first paragraph**

The Examiner has maintained the rejection of claims 43, 45, 46, and 48 - 52 and has also rejected new claim 53 under 35 U.S.C. §112, first paragraph for alleged lack of enablement for prophylactic or therapeutic vaccines or methods of making and using such vaccines is maintained and new claim. Applicants respectfully traverse this rejection as being based upon an improper standard. Specifically, the Examiner posited the question incorrectly. The issue is not whether someone skilled in the art would have doubted enablement but, rather, whether someone skilled in the art would have found it not credible. The former places less burden on the Examiner, but is not the correct standard. It is from that erroneous framework that the Examiner continued to maintain the rejection.

Nevertheless, in the interest of advancing prosecution of the application, Applicants have canceled claims 43, 45, 46, and 48 - 52, rendering this rejection moot. Applicants respectfully

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request withdrawal of the rejection of claims 43, 45, 46, and 48 - 53 under 35 U.S.C. §112, first paragraph.

**Conclusion**

Applicants respectfully submit that claims 38 - 40 and 42 are in condition for allowance. A notice of allowance is earnestly solicited. If the Examiner feels a telephonic interview would be helpful, she is asked to call the undersigned at 215-557-5901.

Respectfully submitted,



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